IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No. 982 of 1985

For Approval and Signature:

Hon'ble MISS JUSTICE R.M. DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

SHAH JAYANTILAL PURSHOTTAMDAS SINCE DECD THRO HIS HEIRS

Versus

DOSHI AKALANKKUMAR KEVALCHAND LEGAL PRACTITIONER

Appearance:

1. Civil Revision Application No. 982 of 1985

MR PRASHANT G DESAI for Petitioner No. 1-1/4

MR MC SHAH for Respondent No. 1

..... for Respondent No. 2-2/2

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 16/09/2002

ORAL JUDGEMENT

This Revision Application has been preferred under section 29 (2) of the Bombay Rents, Hotels &

Lodging Houses Rates Control Act, 1947 [hereinafter referred to as, "the Rent Act"] against the judgment and order dated 2nd May, 1985 passed by the learned District Judge, Banaskantha in Regular Civil Appeal No. 2 of 1984. The petitioner before this Court is the Appellant-Defendant.

The respondent no. 1 herein is the owner of the suit premises i.e., a shop situated at Idar. The respondent no. 1 [hereinafter referred to as, "the plaintiff"] instituted Civil Suit No. 223 of 1975 in the Court of Civil Judge (JD), Idar against the defendants for recovery of possession and arrears of rent. It was averred that the suit shop was given on rent to the defendant no. 1 on a monthly rent of Rs. 25/=. The plaintiff had sought recovery of possession of the suit shop in Civil Suit No. 15 of 1959. The said Civil Suit No. 15 of 1959 was compromised under the consent terms Exh. 6. Under the compromise, the defendant no. 1 paid the entire amount of rent then due and agreed that the monthly rent of Rs. 25/= was the standard rent of the suit shop and also agreed to hand over the vacant possession of the suit shop on his getting another shop on rent. The suit was decreed in the terms of the said compromise. However, the defendant no. 1 did not vacate the suit shop. Instead, the defendant no. 1 sub-let the suit shop to the defendant no. 2. Hence, the recovery of the possession of the suit shop was sought on the ground that the tenant-defendant no. 1 had unlawfully sub-let the suit shop to the defendant no. 2; that the defendant no. 1 was in arrears of rent and that the plaintiff required the suit shop for personal use.

The suit was contested by the defendant no. 1 by filing written statement Exh. 20. The allegations made in the plaint were denied. It was contended that the suit shop was taken on rent by the partnership firm wherein the defendant no. 1 and his brother, the father of the defendant no. 2 were the partners. On dissolution of the partnership, the tenancy right in the suit shop went to the share of the brother of the defendant no. 1. On the demise of the said brother, the defendant no. 2 being his son had continued to run the business and to occupy the suit shop. The defendant no. 2 also contested the suit by filing written statement Exh. 21.

The learned trial Judge was pleased to hold that the suit notice was legal and valid; that the defendant no. 1 was tenant of the suit shop and that the rent was payable by month. That on the date of the suit notice,

the defendant no. 1 was in arrears of rent; that the defendant no. 1 had sub-let the suit shop to the defendant no. 2; that the plaintiff bona fide required the suit shop for his personal use. The trial Court, therefore, under the judgment and order dated 22nd December, 1982 passed a decree for possession of the suit shop as well as for arrears of rent and the mesne profits.

Feeling aggrieved, the defendants preferred Regular Civil Suit NO. 2 of 1984 in the Court of district Judge, Sabarkantha. The learned District Judge, Sabarkantha under the impugned judgment and order dated 2nd May, 1985 dismissed the said appeal. Feeling aggrieved, the defendant no. 2 has preferred the above Revision Application. Pending this Revision Application, the defendant no. 2 also has died. The Revision Application is prosecuted by his heirs and legal representatives.

Mr. Desai has appeared for the petitioners and has assailed the impugned judgment. He has submitted that both the Courts below have committed an error in recording finding against the defendants. I see no substance in the arguments advanced by Mr. Desai. Both the Courts below have recorded concurrent findings against the defendants. There is no scope for interfering with the said findings in exercise of the revisional jurisdiction under section 29 (2) of the Rent Act. In view of the findings recorded by both the Courts below, the decree for possession should necessarily be passed. Hence, the Revision Application is dismissed with costs. Rule is discharged. Interim stay is vacated.

{Ms. R.M. Doshit, J.}

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